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Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler\*innen

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CURRENT DEVELOPMENTS

## Returns Without Examinations

### Greece's Recent Judgment on Syrians' Asylum Claims

LENA RIEMER — 4 October, 2017



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On September 22, 2017, Greece's highest administrative court – [the Council of State](#) – proclaimed that two Syrian asylum seekers can be deported to Turkey as a so-called safe third country. A [court official explained](#) the reasons for the judgment stating that “the court rejected the Syrians' claims that their life and freedom would be in danger if they were returned to Turkey, as the judges opined this did not emerge from any evidence”.

The execution of this return will mark the beginning of a new development as it will be the first official forcible return of asylum-seekers from Greece to Turkey without an individual examination of the asylum claims since the implementation of the EU-Turkey Deal. As this post will show, these returns violate the *non-refoulement* principle as well as the prohibition of collective expulsion.

#### Turkey – a safe third country?

The legal basis for returns under the so-called [EU-Turkey Deal](#) can be found in the [Asylum Procedures Directive](#) (APD), especially in the “first country of asylum” and “safe third country” concepts (Art. 35 and 38 APD). The Greek court relied on the latter for its justification of the returns.

Under the [safe third country concept](#), asylum seekers are returned to a state of transit where they could have applied for international protection or, alternatively, where they did seek protection but their status was not determined. Returns on this basis nevertheless require

an individual assessment of whether the previous state – in this case Turkey – will in fact readmit the asylum seeker, grant her access to a fair and efficient procedure, permit her to remain, and treat the asylum seeker in accordance with international human rights standards. This standard of treatment entails *inter alia* protection from *refoulement* and a timely durable solution. The *non-refoulement* principle obliges states not to return asylum seekers to countries where their life or freedom would be threatened.

This individual assessment must provide every asylum-seeker with the opportunity to be heard, and to explain why in her circumstances a return to the third country would not fulfill this standard of treatment. The EU herself pledged that this standard will be upheld under the EU-Turkey Deal, stating that “only asylum seekers that will be protected in accordance with the relevant international standards and in respect of the principle of *non-refoulement* will be returned to Turkey.”

In order to declare a third country as “safe,” formal criteria must be fulfilled. One of these criteria is whether or not the third country is a party to the 1951 Convention and the 1967 Protocols (Refugee Convention) – which Turkey is not. Alternatively, the State must offer equivalent protection commensurate with the Refugee Convention and international human rights standard including the adherence of the *non-refoulement* principle. A general assessment of safety cannot ensure due consideration in every case (Art. 38(2)(b) and (c) APD).

For Turkey to fulfill this standard, appropriate asylum procedures and systems to secure that the life and liberty and physical integrity of every asylum seeker is ensured would need to be in place. This is not the case with regard to the treatment of Syrian asylum seekers in Turkey. They cannot receive refugee status, as Turkey excludes non-Europeans from qualifying for this status. The equivalent standard to the Refugee Convention is also not met as the Turkish system for examining asylum applications does not contain the minimum safeguards required by international law for fair and accurate refugee determination. NGO reports proof that local police officers record the substance of claims with the assistance of interpreters who are often incompetent. In addition, case decisions are made by officials who lack expertise and independence. There are no provisions for oral hearings or legal assistance and applicants are not provided with a written notification of the reasons for their denial. Besides that, appeal rights are ineffective or inaccessible. In any case, asylum seekers in Turkey are conceded only a conditional refugee status which grants them fewer rights than offered by the Refugee Convention, in particular with

regard to the right to family reunification.

Even assuming that Turkey offered an equivalent standard, the country does not protect asylum seekers from being refouled. Especially since the declaration of the state of emergency in 2016, reports on unlawful returns from Turkey to Syria have accumulated. The returns from Turkey to Syria are a clear violation of the customary non-refoulement principle.

Consequently, asylum seekers and refugees are denied effective protection in Turkey. As appropriate asylum procedures and systems are not in place, effective access to protection for every asylum seeker is not granted, and many asylum seekers have been *refouled* to Syria, the required standard established by the APD is not met. Hence, the requirements for a safe third country are not fulfilled which leads to the conclusion that Turkey should not be qualified as such by the European Union. By returning Syrian asylum seekers from Greece to Turkey who might then unlawfully be returned to Syria, the European Union abets this violation of the customary law non-refoulement principle and accepts putting people at risk.

### **Returns violate the prohibition of collective expulsion**

The accusation that the EU-Turkey Deal violates the *non-refoulement* principle has been raised since its implementation over a year ago. Now, as returns on the basis of the safe third country concept and without individual examination will be conducted for the first time, the prohibition of collective expulsion is equally on the brink of being violated.

The prohibition of collective expulsion – which is of customary law character and codified in Art. 4 Protocol No. 4 to the European Convention on Human Rights – demands an individual, reasonable and objective examination of the personal circumstances of every claimant and her particular case by the relevant authorities.

According to the ECtHR in its Hirsi judgment of 2012, the purpose of the prohibition of collective expulsion is to prevent states from removing certain aliens without examining their personal circumstances. Considering the fact that Turkey is not a safe third country, returning asylum seekers under the terms of the EU-Turkey Deal without prior examination of the individual circumstances of every claimant violates this prohibition.

In conclusion, as Turkey should not be considered a safe third country,

no returns from Greece should occur on the basis of this concept. Such returns would not only violate the *non-refoulement* principle; due to the absence of an individual examination of the personal circumstances of every asylum seeker, they would also violate the prohibition of collective expulsion.

By a narrow vote, the Greek court has failed to refer the question as to whether Turkey can be considered a “safe third country” to the European Court of Justice for a definite answer. Now, the only remaining hope is the direct and individual application to the European Court of Human Rights by the Syrian asylum seekers claiming a violation of their rights under the European Convention on Human Rights and its Protocols. It would not be the first time that the judges would have to consider issues relating to returns under the EU-Turkey-Deal as in June 2017, the European Court of Human Rights granted interim measures and halted the return of a rejected Pakistani asylum seeker to Turkey on the basis of this deal.

*Lena Riemer ist Doktorandin zum Thema “The prohibition of collective expulsion in public international law” bei Prof. Helmut Aust und wissenschaftliche Mitarbeiterin im Projekt Human Rights under Pressure an der Freien Universität Berlin.*

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